

1972

# Newspaper Clippings Pertaining to National Press Council, Part I

Roger J. Traynor

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Turn Dec 19, 1972 p. 11

## Nixon Bill Would Check Local TV Stations On 'Bias' in Network News, Entertainment

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—The Nixon administration has drafted legislation that would make extensive revisions in the process by which television stations renew their broadcasting licenses, in the process reducing the role of the Federal Communications Commission and providing additional "checks" on TV network news and entertainment programming, White House officials said.

In a speech prepared for delivery to a professional journalism society in Indianapolis, Clay T. Whitehead, director of the White House Office of Telecommunications Policy, or OTP, said the legislation would hold local stations accountable at license-renewal time for the fairness and taste of all programs they air, including those distributed by the networks, and strongly suggested stations would lose licenses if they failed to "act to correct imbalance or consistent bias from the networks."

However, as explained by other sources close to OTP, the draft legislation goes far beyond emphasizing the responsibility of local stations for network programming. In what a broadcasting group president called "as much as any reasonable broadcaster could hope for," the legislation makes license renewal contingent solely on a judgment by the FCC that the broadcaster has upheld two broad standards—that he has ascertained and responded to the needs of his community, and that he has provided reasonable opportunity for the discussion of varying points of view on controversial issues.

Those standards would effectively supplant two policies governing broadcast license renewals at present—the "fairness doctrine," which requires broadcasters to give equal time to all sides of controversial issues, especially in political elections, and the set of program categories and percentages (religious, public affairs, educational, etc.) by which the FCC currently judges response to community needs.

### Policies Urged by Broadcasters

Both policies have long been attacked by broadcasters. The "fairness doctrine," they argue, is so rigid it prevents adequate coverage of controversial matters. For example, few broadcasters would willingly give equal time to the 26 different accredited candidates for president last fall. Similarly, the use of program categories and percentages rewards the "burial" of community service programming in odd hours while giving little consideration to the quality or relevance of that programming to community needs.

In addition, the draft legislation would extend the license period to five years from the present three years and would put the burden of proof upon the challenger in any case where a license renewal was challenged before the FCC. Both are changes long sought by broadcasters. According to an OTP official, "if a licensee could show the commission he had complied with the two basic standards, he would retain his license." At present, the FCC holds a competitive hearing between applicants for a license in any challenge situation.

The draft legislation was interpreted by one Washington source as limiting the power of the FCC to set renewal standards for broadcast licenses, also a subject of considerable dispute in the broadcast industry. This source said the FCC would "no longer build industry principles out of individual, ad hoc hearings. Each hear-

ing would go back to ground zero, the two basic standards."

The proposed legislation is scheduled to be introduced next year, Mr. Whitehead told a chapter of Sigma Delta Chi. He termed it "an important first step the administration is taking to increase freedom and responsibility in broadcasting." That position, however, is likely to be challenged by many broadcast journalists, who may view it as an attempt to pressure the TV networks into friendlier coverage of the administration.

Under the legislation, stations could "no longer accept network standards of taste, violence and decency in programming," Mr. Whitehead told the Sigma Delta Chi meeting. If network programming doesn't meet local community needs and interests, the stations must "jump on the networks rather than wince as the Congress and the FCC are forced to do so," he added.

### Responsibility on Stations, Not Networks

And responsibility over news programming would be crucial, Mr. Whitehead said, contending there's a need to deal with the "ideological plugola" in which broadcasters "stress or suppress information in accordance with their beliefs." Just as publishers and editors are responsible for the news they print, stations "have final responsibility for news balance, whether the information comes from their own newsroom or from a distant network," Mr. Whitehead continued.

"Who else but management," the White House official asked, "can or should correct so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis?"

Saying there are only "a few sources" of national news on television, Mr. Whitehead asserted that local broadcasters and network management must exercise more effective editorial responsibility. He added that, "station managers and networks officials who fail to ack to correct imbalance or consistent bias from the networks, or who acquiesce by silence, can only be considered willing participants, to be held fully accountable by the broadcaster's community at license-renewal time."

Following release of the text of Mr. Whitehead's speech, RCA Corp.'s National Broadcasting Co. said "the administration plan as described by Mr. Whitehead seems to be another attempt to drive a wedge between the TV

stations and the networks." Most other broadcasters declined comment, saying they had seen neither the speech nor the draft legislation.

An American Broadcasting Cos. spokesman said: "While we haven't seen a draft of the proposed legislation, we are concerned that Mr. Whitehead's remarks may represent an obstacle to the continued good relationship between networks and local stations."

However, Lawrence H. Rogers II, president of Taft Broadcasting Co., said after talking with OTP officials that the overall draft was "as much as any reasonable licensee could hope for and possibly more than he could hope to get past Congress." Mr. Rogers also played down the importance of Mr. Whitehead's remarks about network programming.

"I happen to believe the networks leave a great deal to be desired in terms of taste and balance," he said. "But the Communications Act makes it abundantly clear that licensees are the sole statutory censors of what they put on the air. When the networks do something I don't agree with, my response is to take it off the air or raise hell until they change it."



## Judges for Journalism

The press judges everybody, but who judges the press? Unlike other professions and the business community, the press has no machinery for setting formal standards or evaluating accusations of unfairness or bad practice. One often proposed solution: set up an independent council to perform this sensitive mission. That idea, however, has always evoked opposition from those who consider the press in quite a different category from the professions or

business and see it as a vital, independent part of the democratic system. Many journalists feel that a council would infringe on the freedom of the press, prove unworkable, or both. The question has become even more relevant in the past few years because of political attacks on the news media and legal disputes over reporters' rights to keep their sources confidential.

Now the council proposal will get what promises to be a thorough tryout. The Twentieth Century Fund, a small but prestigious nonprofit foundation, announced last week that it was creating a group with two missions: 1) to investigate and report on allegations against major news organizations and 2) to attempt to speak for the press when it is threatened by official restrictions. The project is the result of an 18-month study by 14 jurists, educators and newsmen.\* They proposed establishment of a 15-member council comprising journalists and others yet to be named. The chairman will be former California Chief Justice Roger Traynor, 72.

The council will limit its investigations to national suppliers of news: the major wire services, weekly newsmagazines, TV networks, national newspapers like the *Wall Street Journal*, and the news services supplied by such papers as the *New York Times*. Journalists from these organizations will not sit on the council. A number of foundations will provide a budget of about \$400,000 a year.

A small professional staff will be recruited to investigate complaints about specific reporting performances. If an allegation cannot be resolved by mutual consent or by a lower-echelon complaints committee, the full council will hear and rule on the matter. The findings will have no legal or binding force; the hope is that wide publication of council opinions will give the organization moral authority. These procedures are modeled on those employed by Britain's press council (see box).

Whether the scheme can be translated is questionable. There is little doubt that the U.S. press faces something of a crisis of confidence, and the Twentieth Century group obviously felt that the council could help overcome

it; the task-force report argued that the absence of an independent appraisal process was a "barrier to credibility" for the press. But the council's own credibility and authority will be an issue, and will heavily depend on press cooperation. Some newsmen greeted the announcement with surprise, others with hostility. Though John Oakes, editorial page editor of the *New York Times*, was among the report's signers, his cousin and boss, Publisher Arthur Ochs Sulzberger, recently spoke out against the idea as "simply regulation in another form." A recent poll of the Society of Newspaper Editors also came down on the negative side. NBC said: "The press already has too many people looking over its shoulder."

CBS News President Richard Salant, one of the task force members, replied that "there simply hasn't been enough examination of what we [in journalism] do." Hence the need for "systematic, independent investigators." Commented *Washington Post* Publisher Katherine Graham: "If properly handled, it won't do any harm and might do some good."

## Raw Competition

Journalism in much of Western Europe has long had a strong voyeur strain to it. Its girlie magazines outflank their American counterparts and many general publications have large appetites for nudity and gamy gossip. Hoping to collar part of the European audience, Hugh Hefner has introduced Italian and German editions of *Playboy*. The mid-November debut of the Italian *Playboy* (circ. 350,000) posed a direct threat to *Playmen* (circ. 400,000), a home-grown imitation that has surpassed its American model in spice, if not in style, and

KEN REGAN—CAMERA 5



"PLAYMEN" PICTURES OBSERVED IN NEW YORK  
Invading privacy, evading taste.

## How London Does It

BRITAIN'S General Council of the Press has existed in its present form since January 1964. It is composed of 20 journalists and five "lay" members drawn from diverse occupations. Another five laymen will soon be added. The group meets every two months, and its eleven-man complaints committee, a cross section of the full body, gathers once a month to review charges that cannot be settled by negotiations. The annual budget of \$70,000, provided by newspaper associations and publishers, is spent on investigation of the nearly 400 complaints a year.

Although it has no legal or coercive powers, the council exercises considerable influence over Fleet Street. When it raps a paper, that publication—and all others—generally print the decision. One of the council's most publicized condemnations led the *News of the World* to tone down a series of after-the-fact confessions by Christine Keeler, the feminine lead in the 1963 Profumo scandal. Last September the council chided London's *Daily Mirror* for being "too definitive" in blaming a crew member for a plane crash while an investigation was just beginning. The *Mirror* apologized in print. When the council argued last January against further legal restrictions on news reporting, the government committee considering the proposed new rules decided that they were unnecessary.

Each year visiting journalists observe council procedures and return home both awed and puzzled. "It ought not to work," says Vincent Jones, former executive editor and vice president of the Gannett newspapers, "but somehow it does."

\*The members: Co-Chairmen Lucy Wilson Benson, president, League of Women Voters, and C. Donald Peterson, associate justice of the Minnesota Supreme Court; Barry Bingham Sr., chairman, the *Louisville Courier Journal*; Stimson Bullitt, president, King Broadcasting Company (Seattle); Hodding Carter III, editor, the *Delta Democrat Times* (Greenville, Miss.); Robert Chandler, editor, the *Bulletin* (Bend, Ore.); Ithiel de Sola Pool, professor of political science, M.I.T.; Hartford N. Gunn Jr., president, Public Broadcasting System; Richard Harwood, assistant managing editor, the *Washington Post*; Louis Martin, editor, the *Chicago Defender*; John B. Oakes, editorial page editor, the *New York Times*; Paul Reardon, associate justice, Massachusetts Supreme Judicial Court; Richard Salant, president, CBS News; and Jess Unruh, a Democratic leader now running for mayor of Los Angeles.



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TIME DEC 11 1972  
WEEKLY - 5,100,000



Press Intelligence, Inc.

WASHINGTON, D. C. 20001

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LOS ANGELES, CAL.  
TIMES

M - 966,293

S - 1,246,870

DEC 1972

## The Press Looks Over Its Shoulder

Contrary to what many think, the press suffers more from inhibition than extravagance.

Although large newspapers have their share of pressures, smaller newspapers especially are subjected to more than they can sometimes cope with.

Among them are the fears of giving offense to advertisers or to the scores of powerful elements in the community, not to mention ever-present libel laws that papers without considerable legal and financial resources cannot risk violating.

Not least, we are now being increasingly smothered by the courts.

All of this tends to lead editors and reporters to avoid stories with elements of risk, especially those that most involve the public interest—those, in other words, that cast a critical light on their subjects.

To these inhibiting pressures it is proposed by a Twentieth Century Fund task force to add a council that would receive complaints about the press and return verdicts of sorts. Members of the press are expected to participate and thus, tacitly, would be bound by these decisions.

Although the proposed council addresses itself to national news media, it's hard to see how this could fail ultimately to include practically the entire press, since the output of wire services and other alliances comes from individual newspapers of all shapes and sizes.

OK. None can deny that the press is sometimes pretty bad, sometimes wrong, sometimes careless. For this it deserves criticism—and gets it. From public officials, from community figures, from readers, from every quarter.

If a group wants to establish itself as a more formal agent of critical judgment—leaving aside the important question of its qualifications—OK, too. But it does seem unreasonable to expect the press to join in.

For by joining, a newspaper would in effect agree in advance to abide by the group's judgments. Looking at it pragmatically, there is no way this could fail to affect future decisions on what to publish and what not to publish.

How many publishers and editors already looking over their shoulders at the courts and all the other sources of intimidation, could fail to identify the press council as another reason to refrain from taking a chance? With the trouble already have, who needs more?

All of this would be fine if every publisher and editor were possessed of limitless courage and perfect judgment, along with lots of money. If then the press would become a model of fairness and a fount of relevant and impeccably documented information. And a press council need not then be feared as another suppressant on the dispersal of information.

But publishers and editors like the members of any press council, are imperfect men, whose judgments and whose resources—human and material—are widely varied.

So such a council, however well motivated, inevitably would further restrict the flow of information from an already intimidated press.

The loser, as we keep saying in the face of some skepticism, is always the public.

MILWAUKEE, WISC.  
SENTINEL

M - 169,011

DEC 1 1972

## Place to Start

Although we take a jaundiced view of a national news council, we wait with keen interest to see what will be the first case taken up by such a council, slated to get down to business early next year.

The baby of a Twentieth Century Fund Task Force, the news council is intended "to serve the public by promoting accurate and fair reporting by the nation's press" and "to defend the press when either government or public sources threaten the freedom of the press to gather and report the news."

By national news media is meant the Associated Press, United Press International, NBC, CBS, ABC, Time, Newsweek, US News & World Report, The Wall Street Journal, Christian Science Monitor, news services such as that provided by The New York Times and The Washington Post, public television and radio and all other national disseminators of general news.

Establishing oneself as the judge of the performance of the news media seems to us to be presumptuous, if not downright arrogant. In a free society, the people themselves can and do pass judgment on the news media's performance, as the folding of Life magazine illustrates.

Why, then, are we keenly interested in what will be the first major case taken up by the national news council? It is because there happens to be a charge of national news media bias at hand that would seem to be right up the council's alley.

That would be the charge of liberal bias on the part of the television network news departments. This charge has been made by several observers, best by TV critic Edith Efron in her book, "The News Twisters," TNT, as it is fittingly referred to, convincingly revealed that conservative, white middle class, moderate Negro and ideological left groups were justified in charging network bias against them in coverage of the 1968 presidential campaign.

It also so happens that one of the members of the task force that proposed the national news council was Richard Salant, president of CBS News. In reacting to the council proposal, NBC and ABC spokesmen attacked the idea. Salant, naturally, favors it. "There hasn't been enough examination of what we do," he said. "Take it out of the hands of the people who have an ax to grind, put it into the hands of systematic, independent investigators."

When it came to Miss Efron's book, however, Salant evidently wasn't so interested in systematic, independent investigation. In fact, Miss Efron charges that Salant mounted a public relations campaign designed to destroy her pioneer bias study, TNT, before the public had an opportunity to read it. She presents her charge in a book published last month, "How CBS Tried to Kill a Book."

Miss Efron currently is working on analysis of the fairness or lack of it in the network coverage of the 1972 presidential campaign, an eagerly awaited sequel to TNT.

All of which is to suggest that the charge of network news bias, first brought to a boil by Vice President Agnew's memorable Des Moines speech three years ago, would be the most fitting one for the proposed national news council to tackle first.



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WASHINGTON, D. C. 20001

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SPOKANE, WASH.  
SPOKESMAN-REVIEW

M - 84,759  
S - 127,047

## Press Council Idea Faulty

Once again a proposal for a press council has been made, this time by a group of good citizens who were gathered together under the sponsorship of the Twentieth Century Fund.

The idea of a press council is essentially the idea of an official—although nongovernmental—body to review the performance of the press and to admonish it when its reportage does not conform to what the council thinks it should be.

There is no unanimity of opinion within the press itself as to whether or not a press council is a good thing. It probably would be a fair estimate that most of the editors and publishers of the country are against it, but there is a school of thought that favors it on the ground that some of the lightning of public displeasure might be deflected from the media to the press council. The thought here, apparently, is that a press council might be, at least at times, an explainer and a justifier of what the news profession and its members have done.

That would not be good. If a Spiro Agnew wants to belabor part or all of the press, he should be able to do so without getting tangled up with a third party to the disagreement.

If the press council were working the other side of the street, that would not be good, either. A newspaper or other news medium survives or perishes because of the way it carries out its fundamental duty of reporting the news. If a press council were looking over a newspaper's shoulder, news and policy judgments might be influenced by the council rather than by the management of the newspaper. The local management, unlike the press council, has responsibility not only for making news and editorial judgments, but

also for surviving as a commercial undertaking. The press council does not have the latter responsibility.

What it gets down to is whether we should have a free press or a partially free press.

The justification for a free press is not to make life comfortable for editors and publishers. A newspaper prospers only to the extent that it effectively serves the public as an organ of information. Information consists of news and of advertising.

A single national press council would be like a single national newspaper, forming its own judgments as to how all newspapers and broadcast media should operate. It no doubt would accommodate a certain amount of diversity, but only a certain amount. Those of the press council who admire the New York Times would tend to want to take that as the example of what newspapers should be. Those who deplore that paper, or any other, could be expected to work for a degree of conformity in the other direction.

It is significant that the first step to authoritarian government is to end freedom of the press. We do not suggest that establishing a press council would lead to a dictatorship in this country, but it would be a dilution of freedom of information and opinion.

In 1861 the Chicago Times observed that "it is the duty of a newspaper to print the news and raise hell." The press council idea would probably tame the hell raising and, eventually, the printing of the news.

Summary: The many faults of a diverse and uncontrolled press are not as great as the faults that would replace them under the kind of semi-censorship that a press council would impose.



CHICAGO, ILL.  
Tribune

M - 767,793

S - 1,016,275

DEC 10 1972

## Can the Press Be Half-Free?

Ever since the commission headed by Robert M. Hutchins made its report on "A Free and Responsible Press" in 1947, teams of scholars, lawyers, and journalists have been seeking a formula for monitoring the press without, presumably, jeopardizing its freedom.

This is a little like trying to lasso a steer by mental telepathy. And for all its good intentions, the latest plan—drawn up by a Twentieth Century Fund task force—leaves the basic conflict unresolved.

The Hutchins report fell flat because it seemed to assume that the press was not responsible and should not be free. It tipped its hand by calling for the establishment of a Press Council to act "directly on the press and not thru government channels" but at the same time warning that if the press didn't dance to the commission's tune, "the power of the government will be used as a last resort to force it" to do so.

Like the late Henry Ford's offer of "any color car you want as long as it's black," the Hutchins report promised freedom to the press as long as the press behaved as the commission thought it should.

The Twentieth Century Fund plan does not contemplate any force. The Fund will set up a 15-member council to promote "accurate and fair reporting by the nation's press" and "to defend the press when either government or public sources" threaten its freedom. There will be journalists on the council.

Anyone with a complaint against a major newspaper, broadcaster, or news service who is not satisfied after direct negotiation will be able to appeal to the council. And if the council considers his complaint justified, it will tell the offending publication or broadcaster what it thinks should be done. Beyond that, as the recommendation stands, the council will have no power.

Of course the council, and the Fund itself, and anybody else, for that matter, is perfectly free to voice opinions about the press. We don't say for a

minute that the press is perfect. Many of the council's opinions will no doubt be helpful and fair. Some will deserve to be followed. So who, you may ask, will be unhappy with such a plan?

We'll tell you who: The many people who resent the power of the press. We might name the Hutchins Commission, frustrated planners, corrupt office holders, and excessively vain judges. Others might name Spiro Agnew or the Pentagon. Whoever they are, they will look upon the council as a step toward the control they covet, and will seize every opportunity to discredit the council as being too weak.

And so there will be constant pressure to turn the council into precisely what it is being established to guard against, an agency which assumes the right to tell newspapers and broadcasters what they can or cannot print or broadcast. Perhaps it will be able to withstand this pressure. Perhaps it will earn the respect of the entire press simply by virtue of the fairness and good sense with which it exercises the rights that it already has. If so, its influence will grow.

But the United States is one in a dwindling list of countries where the press is still free, to the great benefit of democracy and the public; and it is free because it has constantly been on guard against any threat to that freedom. Freedom of the press does not mean freedom of the country's newspapers as a whole to do what a council tells them to do, even if the council is of their own making. It means the freedom of any single editor to thumb his nose at his fellow editors, if he wants, subject only to punishment for justifiable offenses such as libel.

To go beyond this is to impose a partial eclipse of freedom. And freedom, like pregnancy, does not come in partial shares.

For all of these reasons, the new council must not count on the support of the press. This is something it will have to prove that it deserves.



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WASHINGTON, D. C. 20001

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FT. WAYNE, IND.  
NEWS SENTINEL

E - 78,484 91972

## Shadowing the Press

Since the beginning of the spoken and written word, there have been attempts to curb it, bend it, silence it and otherwise make it serve despotic or ideological purposes.

In many parts of the world, government has been the more usual whip for riding herd on the press. In the United States, such actions are proscribed by the Constitution and the free traditions of the people.

But the rather free-wheeling situation apparently doesn't satisfy some people, including those who have tax-exempt foundation money to deal with. The Twentieth Century Fund envisions "a consortium of foundations" which would finance a council to monitor the performance of the national news media and investigate complaints.

There is little question that there is always room for improvement in the reporting of

the news. Newspapers and other media rather frequently criticize each other and reflect varying views of news events.

But the promoters of the proposed council want "unbiased criticism" and to "put it into the hands of systematic, independent investigators." The extent of their objectivity can be seen in the makeup of the task force. These include Jesse Unruh of California, Richard Salant of CBS, Lucy Wilson Benson of the League of Women Voters, and Ithiel de Sola Pool, professor of political science of MIT. Heading the operation will be Roger Traynor, former chief justice of the California Supreme Court. The ideological thrust seeps.

"It'll be an interesting experiment and I don't think it'll work," said Ben Bradlee, executive editor of the Washington Post. We would paraphrase that: "It will be an uninteresting experience and it won't work."



ED 14

From  
NEWS  
Detroit, Mich.  
E-650,000 S-850,000

## The public is a press council

With a flourish from its crusader's trumpet, the Twentieth Century Fund has announced plans for a national press council to investigate complaints about the fairness and accuracy of the news media. The press is not above reproach or immune from criticism, but we oppose such a council because it is unnecessary, could become a political weapon, and would be a form of intimidation smacking of censorship.

The public, itself, serves as the fairest, most alert and most vigorous watchdog of the news media. When a newspaper prints inaccurate or distorted information, it can expect immediate response from its subscribers. Most newspapers, including this one, devote considerable space each year to critical letters from readers. With so many critics scrutinizing every story, who believes that a newspaper wants to make mistakes?

Competition in the trade also keeps the media honest. If a newspaper or a TV commentator gets off base,

there's always another newspaper, another commentator, a news magazine, a syndicated pundit, or a Vice-President Agnew to put the matter straight.

But who, we'd like to know, is going to monitor the press council? What kind of moral pressure can be exerted upon it to speak with objectivity and detachment instead of with a voice of political prejudice? Who will prevent it from mounting attacks against papers or TV commentators whose editorial views it doesn't agree with? Who will keep it from playing the role of censor and holding a club over writers and editors as they seek to exercise their rights under the First Amendment?

Finally, it is absurd to suppose that a national press council could expect to deal fairly and intelligently with disputes rooted in purely local conditions in communities scattered across 50 states of the Union. Nor is that an argument for creating local press councils. They are prone to all the evils that dictate against a national council.



ed 14  
*Press Intelligence, Inc.*  
WASHINGTON, D. C. 20001

Front Page	Edit Page	Other Page
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DETROIT, MICH.  
NEWS

E - 592,616  
S - 827,086

DEC 8 1974

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# U.S. Appeals Court Backs Writer on News Source

15  
SF Chronicle Feb 8 Dec 1972 p. 18

## New York

A journalist's right to refuse to disclose a confidential news source was affirmed in a civil case yesterday by the U.S. Court of Appeals for the Second Circuit.

The affirmation vigorously supported a lower court's decision in the case of Alfred Balk, now editor of the Columbia Journalism Review, who refused to identify the source of a magazine article that he wrote in 1962 about racial discrimination in real estate.

In a decision written by Judge Irving R. Kaufman, with the concurrence of Judge J. Joseph Smith and Judge William H. Mulligan, the Court of Appeals emphasized "a paramount public interest in the maintenance of a vigorous, aggressive and independent press."

"It is axiomatic, and a principle fundamental to our

constitutional way of life, that where the press remains free, so too will a people remain free," Kaufman declared.

"Freedom of the press may be stifled by direct or, more subtly, by indirect restraints. Happily, the First Amendment tolerates neither, absent a concern so compelling as to override the precious rights of freedom of speech and the press."

The case grew out of an article in the Saturday Evening Post entitled "confessions of a block-buster — a Chicago real-estate agent who moves Negro families into all-white blocks reveals how he reaps enormous profits from racial prejudice," signed "by Norris Vitcheck as told to Alfred Balk."

Balk said that "Norris Vitcheck" was the fictitious name of a real person who had provided information on

the condition that his identity remain confidential, but the black plaintiffs in a Chicago lawsuit wanted the journalist to identify his source to help their civil case against real-estate operators.

Testifying in a deposition here last year at the request of the plaintiffs, Balk refused to disclose the confidential news source.

N.Y. Times Service



Front Page	Edit Page	Other Page
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ST. LOUIS, MO.  
GLOBE-DEMOCRAT  
DEC 8 1972  
MORNING - 292,789  
WEEKEND - 306,889

## THREAT TO CENSOR FREE PRESS

A task force of the Twentieth Century Fund has gratuitously decided to set up an institute to "promote accurate and fair reporting by the nation's press." By its very announcement the fund implies the press is not accurate or fair.

Nothing would be more logical than for the vast majority of publishers and editors of America to resent this assumption sharply. The vast majority have.

Despite the frailties of human nature, to which news directors and gatherers are subject — no more or no less than other sincere men — there is probably more integrity and justice demonstrated by the United States press than in journalism any place else in the world.

No nation on the face of the globe is better, more honestly informed than the American people.

The proposed council, scheduled to begin operation early next year, threatens public censorship of the press in a move that could imperil the press of the country with an arbitrary straitjacket.

Under the Constitution of the United States it is, of course, possible for anyone or any group to criticize the way newspapers, magazines and the electronic media function.

But this council's design could erode freedom of the press and the spoken word by the weight of endowed propaganda.

☆☆☆

Twentieth Century's statement on the new council observes the purpose is also to defend the press against government or public sources that threaten freedom of the press to gather and report the news.

But the basic purpose of this council is perfectly clear. Its task force declared it would establish the council "because it found a growing concentration of news organizations in the United States and an apparent unresponsiveness to public pressure and criticism."

Probably the most aggressive critics of journalism in the nation are the publishers

and editors themselves. There have been evidences of occasional bias, during political campaigns, in some of the country's leading journals.

But definite and widely successful effort has been made to wipe out such cant. It is always an ongoing purpose in every responsible editorial sanctum.

More than that, it is a practical bread-and-butter issue for journalists. Responsibility and the trust of readers is the paramount stock in the publishing trade.

Without this confidence circulation would wither, a newspaper die. Every editor worth his salt knows this and wants to print only the truth. No national, self-appointed "ombudsman" is needed to monitor what may be printed in the "public interests."

☆☆☆

A recent questionnaire sent to members of the American Society of Newspaper Editors chalked up a 3-to-1 vote against creation of such a council. The president and publisher of the New York Times, Arthur Ochs Sulzberger, has warned against the Twentieth Century Fund council, which seems to have the elitist concept that it knows best what newspapers should print and what they should ban.

No one from major news services, broadcast networks or news magazines would be allowed to serve on the council, which is supposed to have 15 members, the majority apparently from areas totally unfamiliar with the operation of the press. This is presumably on the basis that the uninitiated is the best, at least the loudest critic.

It stultifies understanding to consider that 15 persons chosen by a private foundation could possibly be more competent to monitor, or assume to dictate, the ethics of journalism than the many thousands of publishers, editors and newsmen throughout the nation — whose profession and livelihood depend on integrity and fairness.

ED 16

From 3 1972  
GLOBE-DEMOCRAT  
St. Louis, Mo.  
M-290,000 S-310,000

## THREAT TO CENSOR FREE PRESS

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2.4 17  
*Press Intelligence, Inc.*

WASHINGTON, D. C. 20001

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MIAMI, FLA.

HERALD

DEC 8 1972

M - 380,828

S - 479,025

## EDITORIALS

# We Won't Submit Ourselves To Self-Appointed Monitors

THE Twentieth Century Fund, a foundation established in 1919 by the late Edward A. Filene, the Boston merchant prince, is creating a 15-member council to monitor performance of the nation's news media and investigate public complaints.

According to the Fund, the council will be "an independent body to which the public can take its complaints about press coverage. It will act as a strong defender of press freedom. It will attempt to make the media accountable to the public and to lessen the tensions between the press and government."

This is quite a pronouncement, to say nothing of quite a chore. It plunks a foundation directed by a board which is liberal-oriented politically into the middle of a hot ethical and professional controversy. Should the press have an outside monitor, self-appointed, which, like Wordsworth's seashell, imparts "murmurings" expressing "mysterious union with its native sea"?

The Herald always has welcomed critics at its door and complaints in its columns. We get scores of letters a day addressed to the Editor for publication

or private chastisement. We print as many as the space will allow, and we try to reply to all other serious communications.

A council which will "attempt to make the media responsible" is quite another thing, and by self-definition a rather arrogant one at that. While the Twentieth Century Fund's monitor would have no coercive powers, we wonder whether the Fund itself with its well-known passion for causes has not taken on more than its metabolism can handle.

Our favorite monitor, and one who does enjoy coercive power, is the reader of this newspaper.

If he does not like what he sees he can tell us. If our response is unsatisfactory he can punish us by dropping The Herald. It's been done. But not often enough to affect the readership of a newspaper which has the largest circulation south of a line between Los Angeles and Washington.

The Herald submits itself every day to the monitor it treasures most. It does not propose to submit to any other.

WILMINGTON, DEL.  
JOURNAL

DEC 6 1972  
E - 89,875

## Who Watches the Watchman?

Every American institution from the church to the hot dog is subject to criticism these days, including the press, and when it comes to dissatisfaction with the dissemination of news, Spiro Agnew is not alone.

There have been dozens of plans put forth for monitoring the performance of the press, many of them modeled on the press councils common in Europe, but except for a few local versions located in American small towns, the idea has never caught on here.

Newspapermen, generally speaking, oppose the idea. A recent survey by the American Society of Newspaper Editors found that its members disapprove of press councils, 3 to 1, and prominent journalists here and there occasionally inveigh against the idea that someone who is not a journalist might attempt to assay the quality of the reporting of the news.

One reason for such wariness is that monitoring the press, as done by outsiders, usually winds up with some sort of political tinge. Spiro Agnew's blast was most certainly politically motivated: that is, he criticized the media because it was politically popular to do so, even though his criticisms were not uniformly related to political issues.

A more explicit example of political criticism of the press has been provided by an outfit called Accuracy in Media, AIM, which, despite its name, has proven to be more interested in political purity than in freedom from factual errors. AIM, for some reason or the other, has adopted The New York Times as its favorite target, and the organization's favorite tactic is to prove that the Times "inaccurate" because it may give more space to a liberal point of view than to a conservative spokesman.

For example, when President Nixon ordered the mining of Haiphong harbor, AIM found that more space was given

to criticism of the mining than was given to the President's rationale thereof. Such an index of accuracy is obviously ridiculous, and has nothing to do with accuracy. The President said only so much, and the text of what he said was printed in full. But Mr. Nixon, in this instance, had hundreds of critics; it took lots of space just to list them, let alone give the substance of their varied criticisms. Presumably, if AIM were running the Times, the "other side" would be limited to exactly the same space as that given the President.

This is a long preface to some thoughts on the announcement that the Twentieth Century Fund is planning to establish a press council to monitor the performance of the national news media. The council, which will consist of journalists and laymen, will have no powers, and will make no attempt to monitor the press on a local basis. Instead, it will concentrate on the performance of the Associated Press, United Press International, the several subsidiary news services, such as the one offered by the Times, and the radio and television networks.

The results of such a program will be interesting reading, although hardly conclusive. Who, for example, believing that it should be illegal for an American newspaper to send a reporter to Hanoi, will be satisfied with a press council report that everything the reporter wrote was 100 per cent factual?

The work of such a council might be of assistance to the media, which are right now undergoing more than a bit of soul-searching (and it's about time). But its usefulness to the public is more doubtful, for much criticism directed at the media is actually directed at the (bad) news the media offers.

The executive editor of The Washington Post, Benjamin C. Bradlee, may have put it best when he remarked, "It'll be an interesting experiment, and I don't think it'll work."



# Wait-and-See on U.S. Press Council

NEW YORK — (AP) — Representatives of the national news media which would come under the scrutiny of a proposed national press council are reacting with caution to the idea.

Reactions varied from outright rejection of the entire plan to enthusiastic support. Many news organizations are adopting a wait-and-see attitude.

Plans for the 15-member council to monitor the national news media and investigate complaints about fairness and accuracy from the public, were presented in a report by a Twentieth Century Fund Task Force.

The council is expected to begin operations early next year with funding from a group of foundations. It will be headed by Roger Tray-

nor, former chief justice of the California Supreme Court. Council members will come from the ranks of journalism and the public sector.

Complainants will be required to try to resolve the grievance with the media organization before the council may act and the complainant will be required to waive the right to later legal proceedings on any matter taken up by the council.

The council will have no enforcement powers. No employee of any medium which distributes news nationally or which would be studied will be permitted to serve on the council.

Announcement of the proposed council comes almost simultaneously with completion of a poll of the American Society of Newspaper Editors in which 740 members were asked for their opinion on the ASNE establishing a similar council.

With 405 editors replying, the idea was rejected three to one. Furthermore, they rejected four to one the idea of an organization other than the ASNE establishing a press council.

# Press Council

On the recommendation of a task force of the Twentieth Century Fund, establishment of a national press council to promote "accurate and fair reporting" by the nation's electronic and print news sources is in hand. Unfortunately, the rhetoric of high purpose in which the effort is being wrapped masks basic flaws in the proposal, which is not new in itself.

Every American, genuinely concerned with the free flow of accurate news, is aware of the problems posed in closing the gap between stating that goal and achieving it in the day-to-day operations of news media. For responsible publishers and editors, the effort is a continuing challenge; for irresponsible publishers and editors, the effort is not exerted because the challenge is ignored.

The task force found that a national review council is necessary because of a "growing concentration of news organizations and an apparent unresponsiveness to public pressure and criticism." The council, it said, is to be free of government control or journalistic influence although the task force also said, curiously, that membership of the 15-man council will be drawn from "journalism" and the public.

It is precisely on the composition of this "court" for hearing complaints against the press that earlier proposals for creating a press council have foundered. Who is to sit in judgment? If journalists are to sit in judgment on journalists, the council's findings will be suspect; if journalists are not to be included on the council, how can the news media be heard effectively at the level of decision-making?

In the final analysis, it is not the peers of journalists who can sit meaningfully in judgment on complaints against journalists; it is the readers — or the viewers and listeners — whose determination on fairness and accuracy will prevail. No favorable judgment by a national press council can enhance the image of a shoddy newspaper; no adverse judgment can overturn the judgment of a good newspaper's readers.

The difficulty of achieving the goal the task force has set is acknowledged, in effect, by the task force itself. A press release on its proposal notes that "neither the public nor the national news media have been able to obtain detached and independent appraisals of press performance or threats to freedom of expression." The council, it notes, will take on the job "in the public interest."

PROVIDENCE, R.I.  
JOURNAL

M - 66,673

S - 209,501

DEC 31 1972

The reference to threats to press freedom stems from a second job the task force assigns the court as if to balance the note of prosecution which marks the first task of checking complaints. But as for the question of threat, the news media have been and are admirably served — not least by the Freedom of Information Center at the University of Missouri and a "freedom" newsletter of the American Library Association.

This council, which is doing what nobody ever has done before, carries perhaps the heaviest charge ever laid upon any "ombudsman." It is to investigate complaints against the electronic and press media "the national news services, the largest supplemental wire services, the national news chains, national weekly press magazines, broadcast networks and public television and radio."

How can any group of 15 men and women, presumably top-flight personnel with their own professions to keep them busy, handle the volume of complaints that can be expected from so wide and tempting a target? If all complaints are not at least acknowledged, how can the council preserve its own credibility when it acts on singled-out charges? Singled out by whom?

Since the council will have no power to enforce its findings, it must depend on public opinion for support. Yet it is on public opinion that responsible newspapers depend in the first instance. If they fail to meet their responsibilities, all the press councils in the world will not give them credibility. If they continue the unending effort to meet their responsibilities, a national press council is not needed.



ed 21  
Press Intelligence, Inc.

WASHINGTON, D. C. 20001

Front Page	Edit Page	Other Page
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PHOENIX, ARIZ.  
REPUBLIC

M - 166,541

S - 252,975

DEC 31 1972

## Standing room only

The Twentieth Century Fund, like a millionaire jaded by his yachts and banquets and in search of some new extravagance, has announced plans to establish a press council to monitor the performance of the national news media.

As if the nation couldn't get along without one more beneficence from the lordly foundations that understand America less than most Americans do.

Oh, many people strongly believe news media reform is needed.

The Harris Survey probably wasn't far wrong when it found that only 18 per cent of Americans have great confidence in the printed press, and only 17 per cent in television.

But the people are the best press critics. It's not as if the media hid its product in the padlocked back room. It's delivered to millions of Americans every day on the screen, on the doorstep.

And readers and viewers take pleasure in picking it apart, especially because of the alienated literati's articles about what a terrible, immoral, racist nation this is.

In addition, members of the me-

dia are free to make criticisms of one another.

For instance, syndicated columnist Ralph de Toledano, one of the most active watchers of the establishment media, frequently takes on such organizations as CBS, the New York Times, and the Washington Post, for what he considers their distortion and deception.

And monitoring organizations such as Accuracy in Media (AIM), which is composed of liberals and conservatives, have begun to keep a careful eye on news dissemination.

There are also the journalism reviews — probably the best known of which is the liberal Columbia Journalism Review — to discuss and assess press performance.

In addition, some newspapers either have, or are considering hiring, ombudsmen to receive the public's media complaints.

And there's that familiar tradition, the letter to the editor.

The Twentieth Century Fund is hardly rushing into a vacuum. Just the opposite. Its rather pretentious press council may hardly find room to move.

## WHO NEEDS THEM?

Having presumably solved mankind's other vexing problems, the Twentieth Century Fund has bowed graciously to the wishes of its own hand-picked panel and set up shop as guardian of the morals and ethics of the nation's news media.



Roger Traynor

The Fund plans to establish a national press council next year and already has latched onto Roger Traynor, former chief justice of the California Supreme Court, as head man.

It will, in the foundation's pious words, "promote freedom of the press" by investigating public complaints of unfairness, error, bias or prejudice and publishing their findings.

The latter, we assume, will carry written guarantees that this panel of Paul Prys is itself 100% free of bias and prejudice.

We don't care how much the Fund prates about its virtuous intentions. This is a sneak attempt at press regulation, a bid for a role as unofficial news censor.

The best way to preserve a free press is to permit it to continue policing its own ethics—something it does with a rigor, frequency and effectiveness seldom shown by other enterprises, including foundations.

As for the Fund's feeble attempt to deodorize this scheme by nominating the council to defend the news media from outside threats, we say: Thanks a lot, but no thanks.

Newspapermen have fought their own battles—and done a damn good job of it—for years without the aid of self-appointed meddlers.

## ENDANGERING FREEDOM OF PRESS



VOICE OF THE PEOPLE



# Council to Watch, Protect the Press

New York

A plan to establish a national news council that would investigate public complaints against the press and threats against its freedom was revealed yesterday by a Twentieth Century Fund task force.

M. S. Rossant, director of the non-profit research fund, said that a committee already has been set up to establish and finance the independent council, which is expected to begin operations sometime next year.

Rossant said at a news conference that the council will concentrate its efforts on the major suppliers of the news and not local press, not only because of their national impact but on account of their influence upon local news reporting. The major suppliers include the two national wire services, the three television networks and such newspapers as the New York Times, the Washington Post and the Los Angeles Times.

The council will be made

up of 15 members from the public and journalism and will have no coercive power over the media.

"The national media council proposed here will not solve all the problems facing print and broadcast media, nor will it answer all of the criticisms voiced by the public and by politicians," the report said.

"It will, however, be an independent body to which the public can take its complaints about press coverage. It will act as a strong defender of press freedom. It will attempt to make the media accountable to the public and to lessen the tensions between the press and government."

The report said the task force decided upon an independent council because neither the public nor the national news media were sufficiently detached to appraise the performance of the press. The proposed council will undertake these tasks, the report said.

United Press



# *Fairness, Accuracy of News Media to Be Monitored*

NEW YORK (AP)—Plans for the establishment of a press council to monitor the fairness and accuracy of the national news media, both electronic and print, were announced Thursday by a Twentieth Century Fund Task Force.

The council is expected to begin operations early next year, said M. J. Rossant, director of the fund, a non-profit research organization.

THE TASK FORCE report

said the purpose of the group, to be composed of 15 members from journalism and the public sector, is "to receive, to examine and to report on complaints concerning the accuracy and fairness of news reporting in the United States, as well as to initiate studies and report on issues involving the freedom of the press."

Hartford N. Gunn Jr., president of the Public Broadcasting System and one of the 14-member task force that first proposed the press council, de-

scribed it as "an instrument of education, education of the public . . . education of the press."

The task force, composed of journalists, public officials, educators and jurors, was appointed by the Twentieth Century Fund more than 18 months ago "to examine the feasibility of a press council in the United States," Rossant said.

IN ITS REPORT, the task force said, "The concentration

of nationwide news organizations . . . has grown increasingly remote from and unresponsive to the popular constituencies on which they depend . . . Until now, the citizen had no place to bring his complaints . . ."

The council will have no enforcement powers; it will rely on publicity about its findings. No employee of a national news supplier—including the major news services, the

largest supplemental wire service, the national newspapers, broadcast networks, the national news magazines and public radio and television—will be permitted to serve on the council.

THE TASK FORCE report stressed that the council will be free from governmental or journalistic control.

It said "the council's processes, findings and conclusions should not be employed by government agencies, spe-

cifically the Federal Communications Commission, in its decisions on broadcast license renewals."

A working committee chaired by Roger Traynor, former chief justice of the California Supreme Court, was set up more than a month ago to implement the recommendations of the task force.

Traynor also will head the proposed press council, Rossant said. Other members will be chosen by the working

committee, which includes representatives of various foundations, including the Twentieth Century Fund, the Markle Foundation and the Benton Foundation.

FUNDING for the council for a three- to five-year period will come from a "consortium of foundations," Rossant said. The task force estimated the council will need an annual operating budget of \$400,000.

Exact details of the opera-

tion of the council still must be worked out, said Mrs. Lucy Benson, president of the League of Women Voters, and cochairman of the task force.

Basically, however, the task force recommended that complaints by citizens, groups or others be checked by the council staff; that attempts be made to settle the grievance without formal council intervention; and, finally, if all else fails, that the council hold hearings, investigate the situation and issue a report.



**Around the Nation****National Press Council Urged**

NEW YORK — The establishment of a national press council "to receive, to examine and to report on complaints," about the fairness and accuracy of the news media was proposed yesterday by a Twentieth Century Fund task force.

The 14-member task force, composed of public officials, jurists, educators and journalists, also proposed that the council "initiate studies and report on issues involving the freedom of the press."

The task force report said: "Disaffection with existing institutions . . . has spread to the media of public information — newspapers and magazines, radio and television. Their accuracy, fairness and responsibility have come under challenge. The media have found their credibility questioned, their freedom threatened, by public officials . . . and by citizens."

The task force said there is no "established national and independent mechanism for hearing complaints about the media or for examining issues concerning freedom of the press."

The task force named a committee, headed by Roger Traynor, former chief justice of the California Supreme Court, to draw up plans for establishing such a press council.

**Ransom Money**

MINNEAPOLIS — Part of the \$1 million kidnap ransom money paid for the release of Mrs. H.C. Piper Jr. last July has turned up in the Minneapolis-St. Paul

area, Owatonna and Rochester, Minn., this week, it was learned.

It was the first major break in the investigation. FBI agents and other authorities have been working on the case around the clock since the kidnaping July 27.

Virginia Piper, 49, wife of the board chairman of a Minneapolis investment firm, was kidnaped from her Orono, Minn., home by two men wearing stockings over their heads.

Her husband paid a demanded \$1 million ransom in \$20 bills, and Mrs. Piper was found chained to a tree in a wilderness area near Duluth, Minn., two days after the kidnaping.

The exact amount of ransom money exchanged at the banks was not known immediately.

**Windowless Cell**

LOS ANGELES — The sheriff's department yesterday defended its isolation of newsman William Farr in a windowless room in County Jail, pointing out that the penal code requires segregation of civil and criminal inmates.

Farr, 37, who was given an open-end sentence for contempt of court by Judge Charles H. Older for refusing to reveal the sources of a story about the Charles Manson trial, had described his accommodations as tantamount to solitary confinement.

The reporter has been placed in an 8-by-12 room adjoining the infirmary. He may not watch television, listen to the radio or com-

municate with other prisoners, he said.

The sheriff's department said yesterday that the law specifically provides that prisoners held on such a civil charge as contempt be kept apart from other inmates held on felonies or misdemeanors.

A spokesman said Farr was the only such inmate in the jail.

**Pilots Protest**

LAS VEGAS — American airline pilots will try to bring about a world pilots' boycott that would halt air service to countries providing refuge for hijackers.

The board of directors of the Air Line Pilots Association has unanimously passed a resolution to "reaffirm and re-emphasize" the determination of U.S. pilots to bring pressure to bear on governments to take stronger actions against hijackers.

**Phony Documents**

SAN FRANCISCO — Two San Jose residents have been charged with operating a firm that provided Mexican aliens with phony documents showing they were born in the United States.

U.S. Immigration officials said that Ginnie Sandoval, 45, and Ravier Morales, 30, were accused of selling for \$300 false birth certificates, baptismal certificates, draft cards and Social Security cards.

They were arrested on charges of "conspiring to aid aliens falsely claim American citizenship," authorities said.

From staff reports and news dispatches

News media fairness and accuracy will be examined by a national press council announced by a Twentieth Century Fund task force. The 14-member panel said the council would investigate complaints about the media and "initiate studies and report on issues involving freedom of the press." The group, with members from journalism and the public sector, is to begin operating early next year. It won't have any enforcement powers, and will rely on publicity about its findings.



## Press Panel Will Probe Complaints

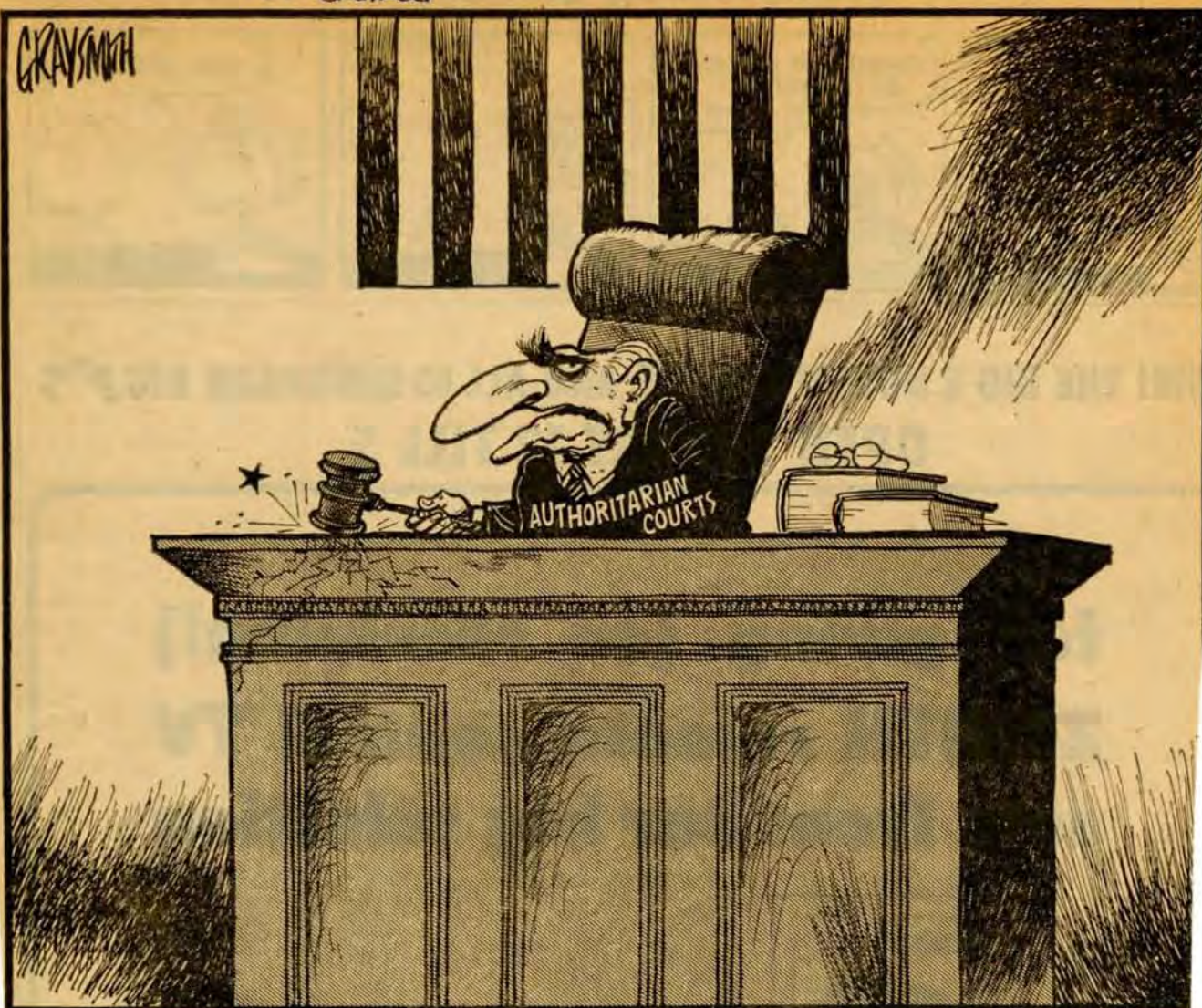
An ombudsman-type commission which will investigate complaints about the way national news is reported will be established by the 20th Century Fund, a task force for the fund has announced.

Patterned after a similar institution in Britain, the Council on Press Responsibility and Press Freedom will promote accurate and fair reporting as well as defend the press when the government or others threaten its freedom to gather or report the news.

The council is expected to begin work early next year. A three-to-five-year experiment, it will be funded at about \$400,000 a year by a consortium of foundations. The council will be entirely independent once it begins work.

Its main function will be to investigate public complaints against national print and electronic media — national and supplemental wire services (those affiliated with large newspapers), national news chains, national weekly news magazines, broadcast networks and public television and radio.





"I don't know anything about journalism but I know what I like . . ."

## The Jailing of the First Amendment

*In a rare departure from custom, The Chronicle herewith reprints a contemporary's comments on an issue of moment and public concern—an editorial published in the Los Angeles Times of Wednesday that deals with a disturbing series of court attacks upon freedom of the press.*

William Farr went to jail Monday. He was imprisoned by order of Superior Judge Charles H. Older of Los Angeles, who convicted the newspaper reporter of contempt of court for refusing to identify the source of a news story about the Charles Manson murder trial.

Farr's imprisonment has less connection with his refusal to betray the confidence of his news source than with two other elements: first, an ugly streak of authoritarianism that is pervading some of the courts and, second, the false free press-fair trial issue that masks an attack on First Amendment protections of press and speech.

The Sixth Amendment, which guarantees a fair and public trial, and the First Amendment are not antithetical. They are allies in freedom, but the First Amendment is the basis of all our liberties. Without a free press and free speech—which mean freedom of thought and, more important, the right to express thought—the administration of justice becomes shrouded in secrecy, which breeds the germs of injustice. The sunlight of disclosure is the best and only disinfectant. All history, and events in present-day totalitarian regimes, bear witness to this truth.

Americans, with our strong tradition of liberty dating from the birth of this nation, can be counted on to repel frontal assaults on freedom. Oblique attacks, advanced in the name of freedom itself, are more difficult to recognize and harder to resist.

The current assaults on press and speech come dressed in noble robes. Restrictions on information about court proceedings have been imposed in the name of a cherished right—a fair trial. Thus, three years ago, the American Bar Assn. suggested compromising the First Amendment in the name of justice. The ABA recommended stringent controls on the release of information in criminal trials, not only by prosecution and defense attorneys and judicial employees but by law enforcement officers as well. In doing so, the ABA gave assurance that its proposals were not aimed at newsmen, but that assurance—since proved false—made the proposal no less repugnant.

pealed) not to print or broadcast anything relating to a murder case except proceedings in court, over which, of course, he exercises direct control.

—A Superior Court judge in Los Angeles prohibited any comment on a pending case by the county, its sheriff and district attorney, the city of Los Angeles, its chief of police and Board of Police Commissioners. His assertion of power was so broad that a writer on legal affairs stated, "Thus a single judge in a single community felt it appropriate to . . . assume the role of the Legislature, the Supreme Court, the executive head of local government, the promulgator of rules of professional conduct and, most importantly, a censor of speech."

—Another judge, in a flight of imagination, named the district attorney, the sheriff, the chief of police and the police commissioners of Los Angeles as "Ministers of Justice," and declared, as such, that their "speech is peculiarly subject to judicial control."

—A Baton Rouge, La., judge ordered newspapers not to publish news about the trial of a civil rights case.

—An Arkansas judge ordered a newspaper not to publish the news on the verdict of a rape trial.

Such decisions are not aberrations by the few judges; a pattern is emerging—a pattern that reflects a no-more-extreme view of judicial power than the State Court of Appeal did in the Farr case. That three-member court waived aside a California law that protects the confidentiality of news sources and said it regarded such laws as "an unconstitutional interference by the legislative branch with an inherent and vital power of the court to control its own proceedings and officers." This was a naked claim to power that mocked the Constitution it invoked.

We have reached this juncture step by step:

First, the assertion, supported by the ABA, that the courts have the right to gag attorneys.

Second, the extension of this power to law enforcement officers and to elected executives of government.



The impulse toward censorship by those in authority is always strong. The courts have recognized this by repeatedly rejecting restrictions attempted by other government agencies, but some judges—not all by any means—have now decided that censorship is the basis of a fair trial. They welcomed the ABA proposals that shielded some stages of judicial proceedings from public scrutiny. The flow of restrictive orders increased, and judges often went far beyond the ABA recommendations:

—A Monterey County judge not only restricted the release of information to the media but removed the press and public from the courtroom while the censorship order was argued. Furthermore, he forbade public complaints about the order. A New York justice barred the public from a criminal trial.

—The secret proceedings ordered in a court in Ventura County were so bizarre that an appellate court commented: "In the present case, it is startling to see the evils of secret proceedings so proliferating in seven short weeks that the court could reach the astonishing result of committing a citizen to jail in secret proceedings, could contemplate inquisitorial proceedings against the newspaper reporter for reporting this commitment, and could adopt the position that the district attorney, the chief law enforcement officer in the county, was prohibited on pain of contempt from advising the public that someone had been sent secretly to jail . . ."

—A Superior Court judge in Los Angeles County attempted last August to enforce direct censorship. He ordered the media (an order that was ap-

Then, an attempt at direct censorship of the media by telling them what they can and cannot print or broadcast.

And, finally, the assertion that the courts are not a coordinate branch of government, but supreme and answerable only to themselves.

All this on the mere presumption, barren of evidence, that pretrial news is always and without question prejudicial to a fair trial.

Judge Harold R. Medina, U.S. senior circuit judge for the 2nd Circuit, foresaw these consequences several years ago. A report prepared under his supervision for the Bar of the City of New York said, "The prospect . . . of judges of various criminal courts of high and low degree sitting as petty tyrants, handing down sentences of fine and imprisonment for contempt of court against lawyers, policemen, reporters and editors is not attractive. Such an innovation might well cut prejudicial publicity to a minimum. But at what a price . . . With respect to the police and the press in the entire pre-trial period, we think it unwise and detrimental to the public interest to give such contempt powers to the courts and the judges."

Judicial censorship that smothers the public's right to know how law enforcement agencies and the courts are functioning will not assure fair trials, but will guarantee the opposite. Censorship will lead to secret investigations, secret arrests and secret trials.

Today, as a portent of things to come, William Farr is in jail. His cellmate is the First Amendment. Judge Charles H. Older of the Superior Court of Los Angeles put them both there.

Morning Report is on page 60

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## Editorials

# The Scholar and His Inquisitors

THE JUSTICE DEPARTMENT was very wise to unlock Harvard professor Samuel L. Popkin's jail cell by dismissing the Pentagon Papers grand jury and thereby terminating his sentence for contempt of court. This got the Government out of a confrontation with the academic world over an issue that may well split lawyers, courts and the intellectual community in general down the middle, namely, may a scholar protect the confidentiality of those who give him information?

Popkin's position was that he would "betray my personal and scholarly ethics" if he were to answer three questions put to him last March by the Federal grand jury in Boston that was investigating the release of the Pentagon Papers. He asks:

"How am I to know that those questions asked me were not designed as part of some great purge of young Foreign Service officers who might have helped me over the years to understand Government policy?"

GOVERNMENT lawyers contended, and the courts agreed, that he was entitled to no immunity for the protection of his sources, and so, after legal appeals, he went to jail two days before Thanksgiving under sentence for the term of the grand jury, expiring Jan. 12, 1973. The Justice Department's move on Tuesday for the grand jury's early dismissal thus saved him 45 days — and two coming holidays — behind bars.

It is worth noting that when President Derek Bok of Harvard went into the Federal court 10 days ago to argue on Professor Popkin's behalf he avoided making a plea that Popkin's constitutional rights were being violated but put his claim for release on the narrow ground that the Government did not intend recalling the grand jury, and this has indeed proved to be the case.

President Bok would not have had everyone at Harvard with him if he had asserted that scholars are protected by the First Amendment in their refusal to answer questions about their sources of information. Some eminent Harvard professors have been quoted as saying they would be loath to see professors claim they are not subject to the normal obligation of a citizen to give testimony under subpoena.

"WHO IS A SCHOLAR?" one asked. "Once you establish this rule, then nearly everybody can claim it."

We think these doubts about a special constitutional right of scholars to stand silent under grand jury questioning are well taken. It has been urged that newspaper reporters have such a right, but a five-man majority of the U.S. Supreme Court has unfortunately rejected it. So it is necessary to establish this right by statute, as is now being attempted in the Bagley bill before the State Senate and in the Cranston bill before the U.S. Senate.